IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 22ND SEPTEMBER 2006 / 31ST BHADRA 1928

ST.Rev..No. 225 of 2004

AGAINST THE ORDER DATED 22/04/2004 IN CO 32/2002 IN TA.381/2002 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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PETITIONER/RESPONDENT/ASSESSEE:

THE WEST COAST WEAVING ESTABLISHMENT
WESCO BUILDING, P.B.NO.2, CHOVVA,
KANNUR-670 006.

BY ADV. SRI.T.M.SREEDHARAN
SMT.M.S.KIRAN
SRI.DEEPAK JOY.K.
SMT.M.V.ASHA BINDU

RESPONDENT/APPELLANT/REVENUE:

STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL.GOVT.PLEADER(TAX) (SHRI V.V. ASOKAN)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 22/09/2006 ALONG WITH STRV NO. 228 OF 2004, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV. NOS. 225 & 228 OF 2004

Dated this the 22nd day of September, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised is whether tribunal was justified in treating the supply of yarn by petitioner to various handloom mills for weaving, amounts to sale.

2. Petitioner is running a small weaving unit with six or seven workers. According to petitioner, yarn is purchased, dyed and supplied to various units for weaving cloth to suit the requirement of petitioner. Value of yarn supplied is debited to the account of the weaving mill and when sale bill is raised for supply of cloth by the unit, petitioner adjusts the value of yarn and pays the differential amount to the weaving unit. Petitioner's case is that the transaction is only a job work and there is no sale involved. Even though first appellate authority accepted petitioner's contention, the tribunal after verifying assessment records and sale bills, came to the conclusion that

the transaction amounts to sale of yarn by petitioner, even though price is recovered by way of adjustment at the time of purchase of cloth by petitioner.

3. Learned Special Government Pleader appearing for respondent, referred to the decision of this Court in Madura Coats Ltd. v. State of Kerala ((1978) 41 STC 333), wherein this Court has held that in similar transactions there is sale of yarn by assessee to weaving unit. On going through the tribunal's order, we find that they have verified the sale bills issued by the weaving units and they found that the said units have treated the transaction as sale of cloth to petitioner. If those units have treated the transaction as sale of cloth to petitioner, even though made to order and with the yarn supplied by petitioner, still the transaction is sale. Therefore, petitioner's case of job work of weaving by entrusting yarn to the units stands demolished. Petitioner has also not produced any contract for weaving between petitioner and the weaving units. The transaction of supply of yarn by debiting the value to the account of the

weaving unit is, therefore, a credit sale because the corresponding transaction is treated as sale of cloth by the weaving units. We, therefore, uphold the finding of the tribunal that supply of yarn, is sale by petitioner and accordingly the S.T. Rev. Cases are dismissed.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.